

United States
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of CREECH BROTHERS LUM-
BER COMPANY, a Corporation, Bankrupt.
A. R. TITLOW, as Receiver of the UNITED
STATES NATIONAL BANK OF CEN-
TRALIA, Appearing in the Name and Stead
of ROBERT G. CHAMBERS, as Trustee
in Bankruptcy of the Estate of CREECH
BROTHERS LUMBER COMPANY, a Cor-
poration, Bankrupt,

Appellant,

vs.

H. W. MACPHAIL,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Western
District of Washington, Southern Division.

Names and Addresses of Attorneys.

R. P. OLDHAM, Esquire, #1408 Hoge Building,
Seattle, Washington,

R. C. GOODALE, Esquire, #1408 Hoge Building,
Seattle, Washington,

Attorneys for A. R. Titlow, as Receiver of
U. S. National Bank of Centralia,
Washington, Appellant Herein.

JOHN T. WELSH, Esquire, South Bend, Washing-
ton, MARTIN C. WELSH, Esquire, Raymond,
Washington, and M. M. RICHARDSON, Es-
quire, Raymond, Washington,

Attorneys for Appellee. [1*]

*In the District Court of the United States for the
Western District of Washington, Southern
Division.*

No. 1627.

In the Matter of CREECH BROTHERS LUMBER
COMPANY, a Corporation, Bankrupt.

Praecept of Appellant and Petitioner for Record.

To Frank L. Crosby, Clerk of Said Court:

Kindly prepare, certify and transmit to the clerk
of the Circuit Court of Appeals for the Ninth Cir-
cuit at San Francisco a typewritten transcript of
the record in the above-entitled cause, containing
the following portions of the record in said cause, to
wit (omitting all captions, indorsements, verifica-
tions, etc., excepting file-marks):

*Page-number appearing at foot of page of original certified Record.

18 *In the Matter of Creech Bros. Lumber Co.*

1. Proof of claim of H. W. MacPhail, Assignee, and exhibits "A," "C," and "D," thereto attached; also exhibits "B-1" thereto attached, but copy only the list of signers to each of exhibits "B-2," "B-3," and "B-4," those exhibits being otherwise identical with exhibits "B-1."

2. Statement of evidence and order approving same.

3. Notice of filing of appellant's and petitioner's proposed statement of evidence.

4. Order of Referee in Bankruptcy disallowing priority to claim of H. W. MacPhail, dated October 6, 1915.

5. Objections to proof of claim of H. W. MacPhail.

6. Schedule A-3 of the schedules of the bankrupt filed December 9, 1914.

7. Findings and conclusions of the District Court and exceptions thereto filed June 12, 1916.

8. Order allowing claim, and exceptions thereto, filed in the District Court June 12, 1916. [2]

9. Demand and notice filed June 21, 1916.

10. Order shortening period of notice, dated June 12, 1916.

11. Order permitting creditor to take appellate proceedings in name of trustee.

12. Petition for appeal.

13. Assignment of errors.

14. Order allowing appeal.

15. Certificate of Comptroller of Currency directing appeal.

16. Praecipe for record.

17. Petition for review of Referee's order, filed October 21, 1915.

18. Minute entries showing filing of petition for rehearing of order of District Court on May 12, 1916, and denial thereof May 29, 1916.

OLDHAM & GOODALE,

Attorneys for Appellant and Petitioner.

(Filed July 10, 1916.) [3]

*In the District Court of the United States for the
Western District of Washington, Southern
Division.*

In the Matter of CREECH BROS. LUMBER COMPANY, Bankrupt.

Proof of Claim of H. W. MacPhail, Assignee.

At Raymond, in said District, on the 24th day of April, A. D. 1915, came H. W. MacPhail, of Pacific County of the State of Washington, and made oath and says:

That Creech Bros. Lumber Company, a corporation of the State of Washington, the above-named bankrupt, was at and before the filing of said petition and still is justly and truly indebted to said deponent in the sum of Fifteen Thousand One Hundred Seventy and 69/100 (\$15,170.69) Dollars; that the consideration of said debt is as follows:

That on the 29th day of October, 1912, the said bankrupt was insolvent and indebted to divers persons and corporations in a large sum of money and it was impossible for said bankrupt to pay said indebtedness or operate its said mill plant, and on said

date the said bankrupt did make and execute a general assignment for the benefit of creditors assigning all of its property and assets to deponent, wherein among other things it was agreed that if the said deponent should operate the saw mill plant owned by the bankrupt in the City of Raymond that all sums advanced by him, or any sums which he might contract as indebtedness in the operation of said plant or in the purchase of logs or in the employment of labor for the operation of said plant should be a first and prior lien and should be paid prior to the payment of any sum or sums due the creditors of said bankrupt which said assignment is hereto attached, marked exhibit "A" and made a part hereof.

And each and all of the creditors entered into an agreement [4] or agreements which are identical in form, but, for the purpose of convenience, were executed in four separate instruments which were signed by each and all of said creditors, and in said instruments said creditors, and each of them, agreed that any sums advanced or contracted by said H. W. MacPhail in the operation of said plant should be paid prior to the payment of any sum due said creditors, which said instruments are hereto attached, marked exhibit "B-1," exhibit "B-2," exhibit "B-3" and exhibit "B-4," and made a part hereof.

That after the execution of said instruments aforesaid said deponent did as such assignee take charge of said plant and operate the same from and including the month of November, 1912, to and including the month of July, 1913, and during said time he contracted indebtedness and expended money to the amount of Thirteen Thousand Eight Hundred

Seventy-seven and $74/100$ (\$13,877.74) Dollars in excess of the amount which he received, and said corporation became indebted to him in said sum over and above all just credits and offsets which is itemized and shown on exhibit "C" hereto attached; and at the time of the filing of said petition there was due deponent as interest on said amount so advanced by him as assignee the sum of One Thousand Two Hundred Ninety-two and $98/100$ (\$1,292.98) Dollars as shown by an itemized statement hereto attached and marked exhibit "D," making a total due from said bankrupt to deponent at the date of the filing of said petition herein of Fifteen Thousand One Hundred Seventy and $69/100$ (\$15,170.69) Dollars.

That no part of said debt has been paid; that there are no offsets or counterclaims to the same and said deponent has not received any security for said debt except in so far as said debt is secured by reason of being a preferred claim.

That said assignment for the benefit of creditors made by said bankrupt to deponent on the 29th day of October, 1912, as aforesaid, was honestly made for the purpose of applying all of the assignors property to the payment of its debts, and such assignment was accepted [5] by deponent in good faith and he executed it intelligently and honestly for the best interest of said assignor and the creditors.

That priority in payment of the claim of deponent is claimed by virtue of the provisions of the Acts of Congress relating to bankruptcy and the statutes and laws of the State of Washington, and this deponent

WHEREAS, the second party has signified his willingness to finance the operation of said plant, provided he could be amply and fully protected for all sums advanced or contracted by him, and provided the creditors would extend the time of payment of their several claims and desist from pressing said claims, in the courts or otherwise.

NOW, THEREFORE, for and in consideration of the sum of One Dollar each to the other in hand paid, and the mutual covenants and agreements herein made and contained, it is agreed by and between the parties hereto as follows:

That the second party be and he hereby is appointed sole and exclusive agent and representative of the first party, to take full, complete and exclusive charge of all of its property, real, personal, and mixed, of every kind, nature and description, wherever situated, and the said first party does hereby sell, transfer and assign unto the said second party, the above-described lands, real estate and personal property, in the State of Washington, and elsewhere, with full power and authority to sell and dispose of all of said real estate and personal property, including lumber, engines, locomotive, railroad iron and all other personal property of every kind, nature and description, and to use the money which he may obtain from the sale of said property for the [7] purpose of paying the indebtedness of said corporation, or the operating expense or any other purpose for which he may deem best, or for the purpose of enlarging, adding to or repairing said mill plant; also the right and authority to borrow money or

otherwise contract indebtedness in the name of said corporation, and to purchase logs, employ labor, purchase machinery, supplies and equipment for cash or on credit and to repair and operate said mill plant and to do all things in connection therewith as fully and completely as the first party could by and through its proper officers, duly authorized by the board of trustees and its stockholders.

It being distinctly understood by and between the parties hereto that any sums advanced by the second party or any sums which he may contract as indebtedness in the operation of said plant, or in the purchase of logs or the employment of labor for the operation of said plant shall be a first and prior lien and shall be paid prior to the payment of any sums now due the creditors of said corporation.

The second party agrees that he will, as agent, for and in the name of said corporation, purchase logs and employ labor and operate said mill for and in the name of said corporation so long as the same can be operated at a net profit of One Thousand Dollars or more per month and that from the profits derived from the operation of said plant, he shall first reimburse himself for any sums advanced by him and shall next pay and discharge any bills or indebtedness which he may contract in the operation of said plant, and the remainder, if any, he shall pay to the creditors *pro rata*, share and share alike, in proportion to their said claims until all of said claims, together with interest thereon at the rate of eight per cent per annum, have been fully paid, satisfied and discharged, and if there shall be any surplus, to pay

the same to the first party, its successors and assigns.

It being distinctly understood and agreed, however, that if said plant when operated in a good, diligent and business like manner, should not clear the sum of One Thousand Dollars per month, Net, that then the second party, may at his option, cease to operate said plant, and [8] sell and dispose of all of said real estate and personal property, and accounts and bills receivable for the purpose of first reimbursing himself for any sums advanced by him or any sums contracted by him in the operation of said plant, and second to pay the creditors of the first party in full or *pro rata*, and the fact that he may cease to operate said plant shall not be construed as terminating his rights under this contract until he has been fully paid for all sums by him advanced and until all sums by him contracted for have been fully paid, satisfied and discharged, and creditors have been paid in full or said assets have been all reduced to cash and the second party reimbursed, and the balance paid, *pro rata*, to the creditors of the first party.

And the first party hereby constitutes and appoints the second party, its attorney in fact, irrevocably with power of substitution, authorizing him in the name of the first party or otherwise, as the case may required, to hire and employ all managers, agents or other persons, and to do any and all acts, matters and things necessary to carry into effect the true intent and meaning of these presents, which the first party might do through its proper officers when duly authorized by resolution of its trustees and stockholders.

AND the second party hereby accepts there trusts and covenants to *anc* with the first party, to execute the same faithfully to the best of his ability.

The second party further covenants and agrees that if any creditor to which said corporation is indebted in the sum of more than One Thousand Dollars should so demand, that he will enter into a bond in the penal sum of Fifty Thousand Dollars with the party of the first part, conditioned that he will comply with the above and foregoing assignment and faithfully and honestly account for all sums received by him and in all manners faithfully and impartially execute said trust, said bond, if given, to be approved by the cashier of the Scandinavian American Bank of Astoria, Oregon, and the cashier or president of the Hayes & Hayes Bank of Aberdeen, Washington.

[9]

IN WITNESS WHEREOF the said parties have hereunto set their hands and seals this 29th day of October, 1912.

CREECH BROS. LUMBER COM-
PANY. (Seal)

(Signed) By J. S. CREECH, Pres.

ALMA SMITH, Sec.

H. W. MacPHAIL.

Witnesses:

(Signed) MARTIN C. WELSH.

We, the undersigned stockholders, and being a majority in amount of the capital stock of said corporation, Creech Bros. Lumber Company, do hereby consent to and approve all of the terms and conditions of the above and foregoing agreement and ap-

prove the action of the president and secretary in executing said instrument in the name of and in behalf of said corporation, and we hereby agree to refrain from, and to waive any and all rights which we may have to prevent said agreement from being carried out and executed according to the true intent and meaning thereof.

F. E. CREECH—185 shares.

By MARTIN C. WELSH,
Attorney in Fact.

WELSH & WELSH—184 shares.

MARTIN C. WELSH—50 shares.

ALMA SMITH—70 shares.

D. H. SLATER—30 shares.

J. S. CREECH.

E. A. RUPERT.

E. F. MURRAY—50 shares.

W. E. BRADLEY—20 shares.

A. S. WATSON.

HARRY MURPHY—1. [10]

**Exhibit "B-1"—Agreement October 21, 1912—
Between Creech Bros. Lumber Co. and Creditor
of H. W. MacPhail.**

WHEREAS, Creech Bros. Lumber Company, a corporation of the State of Washington, which owns a saw mill at Raymond, Washington, is indebted in the sum of approximately \$135,000, and

WHEREAS, its liabilities greatly exceed the resources of said corporation, and the company is therefore insolvent, and

WHEREAS, the stockholders and trustees of said corporation have agreed to make an assignment to

H. W. MacPhail for the benefit of all of the creditors of said corporation, and

WHEREAS, the said H. W. MacPhail has agreed to operate said plant as assignee and purchase logs for that purpose and otherwise finance the operation of the same, provided the same can be operated at a profit, and also provided the creditors will extend the time of payment of their several accounts and desist from pressing said accounts until they can be paid by the profits derived from the operation of said plant.

NOW, THEREFORE, we the undersigned creditors, in consideration of said assignment and of the agreement of the said H. W. MacPhail to finance said plant, severally agree that if said assignment is made and if the said H. W. MacPhail shall finance and operate said plant, that we will extend the time of payment of our several claims and desist from pressing said claim in the courts or otherwise, so long as said plant is operated at a monthly net profit of \$1000 or more per month. It being understood that in the operation of said plant that the said H. W. MacPhail shall first pay the cost of operation and all sums contracted by him as such assignee, and all sums advanced by him, and thereafter shall pay to the creditors interest at the rate of eight per cent per annum on their said accounts, and shall pay the balance to the said creditors *pro rata*, share and share alike in proportion to their several claims, payments to be made quarterly, commencing on the 1st day of March, 1913, and continuing until all of said [11] indebtedness, including principal and interest is paid in full.

It is further understood and agreed that said assignee will if desired by any of the creditors issue to said creditors a certificate showing the amount due said creditors and the manner in which the same shall be paid and the rate of interest which the same shall bear.

Signed and dated this 21st day of October, 1912.

WILLAPA HARBOR STATE
BANK,
By H. W. MacPHAIL, V.-
Prest.

WILLAPA HARBOR IRON
WORKS.

By JOHN E. GILCHRIST.

J. L. MYERS.

RAY EDY. & MACH. CO.

R. GERBER, Manager.

SILER MILL CO.

By W. S. GAIN, Secty.

G. E. GARRETT.

HENRY DISTON & SONS, INC.,

By D. W. JAUNKIN, Gen.
Mgr.

PHILBRICK CUTTER HEAD
COMPANY,

W. W. PHILBRICK.

WASHINGTON IRON WORKS.

By FRANCIS G. FRINK,
Secy.

JOHN FINN METAL WORKS.

C. C. FINN, Secretary.

CARSTENS PACKING CO.

By W. C. PRATER, Sec. and
Treas.

HAYES & HAYES BANKERS,

By W. J. PATTERSON,
Cashier.

WEST COAST WIRE ROPE CO.

By J. T. GREGORY, Presi-
dent.

HART-WOOD LUMBER CO.

By T. H. HART.

WILLAPA LUMBER CO.

Per RALPH H. BURNSIDE,
Vice-Pres.

DAVIS-SCOTT BELTING CO.

C. R. DAVIS, Secy.

SIMONDS MFG. CO.

E. E. TRESSLERS, Auditor.

W. P. FULLER & CO.

By C. B. WOODRUFF, Mgr.

PACIFIC TRANSPORTATION CO.

By T. H. BELL, Mgr.

LEWIS & REED,

By FLOYD L. LEWIS.

KALB & LARKIN LOGGING CO.

R. A. YOUNG, Mgr.

NIAGARA BOOM CO.

By R. A. YOUNG, Sec.

DWIGHT EDWARDS COMPANY.

A. O. STAFFORD, per Mgr.

SEATTLE HARDWARE CO.

C. S. WILLS,

By W. HORCHBROOK, Treas-
urer.

RAILWAY SUPPLY COMPANY.

By M. J. PIGATT, Sec. &
Treas.

S. B. HICKS & SONS CO.

A. M. HICKS, Treas.

To the Creditors of Creech Bros. Lumber Company:

We have carefully read the attached agreement and having a personal knowledge of the situation believe that the plan as outlined is for the best interest of all concerned, and especially in view of the present good prices prevailing in the lumber market and the prospect for a continuation of this condition during the next few years. We also have every confidence in the ability of Mr. H. W. MacPhail and his associate Mr. C. H. Gilchrist to operate the plant to the best possible advantage, and can assure you that they will have our hearty co-operation and support.

SILER MILL CO.

By W. S. CAIN,
Secty.

COLUMBIA BOX & LBR. CO.

Per G. W. CHENEY, Mgr.

QUINAULT LUMBER COMPANY,

By EDWARD LOWE, Jr.,
Secty. and Treas.

WILLAPA LUMBER CO.

Per RALPH H. BURNSIDE,
Vice-Pres.

CRAM LUMBER COMPANY,

By E. A. GRAHAM, Treas.

SUNSET TIMBER CO.

By F. C. SCHORENSKY, Tr.

PACIFIC & EASTERN BOOM CO.

By RALPH H. BURNSIDE, Secy. [13]

PACIFIC AND EASTERN RAILWAY CO.

By W. S. CAIN, Pres.

Exhibit "B-2."

*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*

NASEL BOOM CO.

By GEO. S. LONG,
Prest.

CALDWELL MACHINERY CO.

By JOHN W. McFADON,
Treasurer.

STANDARD OIL CO.

By W. T. DAVIES,
Chief Clerk.

MEESE & GOTTFRIED COMPANY.

By V. C. LYOERSON.

CHEHALIS LUMBER COMPANY.

By BENJAMIN MOORE, Mgr. [14]

Exhibit "B-3."

*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*

CHAS. WIRKKALA.

JOHNSON BROS.

By OSWALD GUSTAFSON.

By MATT JOHNSON.

By FRANK JOHNSON.

SCANDINAVIAN-AMERICAN SAV-
INGS BANK.

J. M. ANDERSON,
Cashier.

CHAS. HERMAN. [15]

Exhibit "B-4."

*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*

BODERICK & BASCOM ROPE CO.

Jos. D. BASCOM,

Sec. & Tr.

CHEHALIS PRODUCE CO.

By I. P. CALLISON.

Dr. W. J. DOLLMEYER,

For Raymond General Hospital.

MARTIN C. WELSH.

NORTHERN PACIFIC RY. CO.

By L. B. DaPONTE, Atty. [16]

Exhibit "C."

ACTUAL CASH RECEIPTS OF CREECH BROS. LUMBER COMPANY BY H. W. MACPHAIL, ASSIGNEE.

Month.	Lumber Sales	Log Sales.	Camp Equipment.	Supplies, etc.	Dumping Logs.	Miscellaneous.	Assignee.	Totals.
1912.								
November	\$1,759.77	\$	\$	\$ 3.50	\$	220.80		\$1,763.27
December	3,034.99			2.50		12.65		3,258.29
January, 1913	10,450.04	42.50				52.35		10,504.84
February	11,428.50	159.14	250.00			60.00		11,889.99
March	17,795.75		100.00	3.75	309.50			18,269.00
April	11,490.20		156.50		260.81	165.00		12,072.51
May	22,658.21	87.33	185.00	7.50	289.84	62.50		23,290.38
June	16,117.70	666.00	2,500.00	62.94	359.52	84.40		19,790.56
July	23,187.85		2,782.99		901.50			26,872.34
August	7,702.79				308.78	26.30	2,000.00	10,037.87
September	7,006.46				342.80	43.00	20,363.11	27,762.92
October	1,905.30	2,226.84	3.50	29.00	911.75			5,076.39
November	2,114.73			69.60	261.92			2,446.25
December	511.64	233.97		55.00	50.00			850.61
January, 1914	1,064.73	100.31		58.25		2.74		1,226.03
February	2,889.20		1,757.53	55.00	53.55	56.32		4,811.60
March	8.40			46.00		35.00	319.97	409.37
April	1,067.02			58.25				1,125.27
May	17.70			45.65	313.89			377.24
June				80.00	515.70			595.70
July	1,171.93							1,171.93
	<u>\$143,382.91</u>	<u>\$3,515.74</u>	<u>\$7,735.52</u>	<u>\$584.49</u>	<u>\$4,879.56</u>	<u>\$821.06</u>	<u>\$22,683.08</u>	<u>\$183,602.36</u>

ACTUAL CASH EXPENDITURES OF CREECH BROS. LUMBER COMPANY BY H. W. MACPHAIL, ASSIGNEE.

Month.	Logs.	Old Accts.	Assignee.	Pay-roll.	Exp.	Interest.	Insurance.	Taxes.	Work-Comp.	Ms-Fees.	Totals.
1912.											
Nov.		\$ 48.67	\$	450.70	213.93	\$ 542.47	\$ 382.65	\$	\$	\$28.99	\$ 1,667.41
Dec.	248.80	49.70		1,604.05	208.35	482.98	115.02		510.07	.48	3,219.45
Jan. '13	2,516.26	75.23		3,930.70	632.31	847.75		820.14		3.73	8,826.12
Feb'y.	2,101.53	148.11		4,139.25	714.74	329.46	969.30			31.16	8,613.55
Mar.	7,408.02			5,367.81	338.59	1,856.98	494.62	852.72		38.84	16,357.58
Apr.	6,038.32	72.20		5,546.30	634.45	573.33	276.93		182.92	50.81	13,375.27
May	9,851.95	3,500.00		5,917.98	274.20	706.69		246.08		51.73	20,548.63
June	13,108.29	10,051.84		4,788.76	431.83	1,902.27				74.97	30,357.96
July	17,342.84			5,793.83	834.37	86.68				47.67	24,105.39
Aug.	7,241.97			4,846.57	316.05	39.31			337.50	93.43	12,874.83
Sept.	23,762.20			581.00	1,638.43	805.79				67.75	26,855.17
Oct.	1,744.34		2,000.00	525.50	38.10	89.64				4.09	4,401.67
Nov.	1,741.49		679.72	453.72	121.50		140.91	246.07	116.28	121.96	3,621.28
Dec.				419.35	243.60				13.01	14.88	690.84
Jan. '14				486.90	77.82	2.50	380.96				948.18
Feb.	31.73		4,633.75	316.50	79.95						5,061.93
Mar.				365.00	74.40					18.00	457.40
Apr.			319.97	343.98	54.65		428.87		11.82		1,157.29
May				241.05	76.25						317.30
June				561.25	24.50	5.95				15.00	606.70
July			1,171.93								1,171.93
	\$93,137.74	13,945.75	8,805.37	46,859.83	7,028.02	\$8,271.80	3,189.26	2,165.01	1,171.61	663.49	185,235.88

[17]

Exhibit "D."

INTEREST DUE H. W. MACPHAIL, AS ASSIGNEE.

B/P #175.	\$11,679.72	9/8/13 to 11/26/13	2 mo. 18 da.....	\$202.45
	11,000.00	11/26/13 to 2/14/14	2 mo. 18 da.....	190.67
	10,725.19	2/14/14 to 7/2/14	4 mo. 18 da.....	328.80
	9,553.26*	7/2/14 to 8/27/14	1 mo. 25 da.....	116.76
B/P #185.	8,683.39	9/28/13 to 2/19/14	4 mo. 21 da.....	272.08
	5,000.00	2/19/14 to 2/20/14	— 1 da.....	1.11
	4,324.45*	2/20/14 to 8/27/14	6 mo. 7 da.....	179.70
B/P #194.	319.97	3/31/14 to 4/17/14	— 16 da.....	1.41
				<hr/> \$1,292.98
Principal Due H. W. MacPhail as Assignee.....				13,877.71
Interest Due H. W. MacPhail as Assignee.....				1,292.98
				<hr/> \$15,170.69

[18]

Statement of Evidence.

The evidence both before the Referee in Bankruptcy and before the District Court upon which the objections of A. R. Titlow, a creditor of this estate objecting in the name of the trustee in bankruptcy to the allowance of H. W. MacPhail's preferred claim, were heard, is as follows:

Testimony of B. H. Lewis, for Claimant.

B. H. LEWIS, a witness on behalf of the claimant, H. W. MacPhail, being duly sworn, testified as follows:

That he resided at Raymond, Washington, and had been actively engaged in the lumber business for about thirteen years and had been engaged in the manufacture of lumber, the buying of logs, and the selling of lumber; that he had had the management of certain sawmills, including that of Creech Brothers Lumber Company; that he was manager of

(Testimony of B. H. Lewis.)

the Creech Brothers Company for about two years, and had been manager for sixty days prior to the time the property was assigned to H. W. MacPhail; that he continued in its management after that assignment until the receiver was appointed in the State court; that during the time he managed it for MacPhail the plant was not engaged in the logging business, but bought the logs which it used; that they sold a limited amount of lumber at Raymond, also a small amount for rail shipments; that they entered into various contracts to furnish lumber and took orders for lumber, as was customarily done. That the mill was operated a little less than seven and one-half months while MacPhail [19] was assignee; that he endeavored to operate as economically as he could the same as in the operation of any other mill.

Referring to exhibit "C" attached to MacPhail's proof of claim, witness stated that he prepared that and that it showed the true state of affairs of the company; that it was prepared during the latter part of 1914, in November or December; that the figures were all taken from the books of the company; that the statement showed that MacPhail expended more money than he derived from the operation of the plant to the extent of between \$13,000 and \$14,000; that this \$13,000 difference was practically all used in paying log drafts; that as for the purchase price of logs that not any of it to speak of was used in paying for labor; that there might have been a small proportion of it; that the statement showed the

(Testimony of B. H. Lewis.)

amount of money paid out by MacPhail for labor during the time he operated the plant, which was \$46,859.03; that \$7,028.02 was paid for supplies; that these expenditures covered not only the 7½ months before mentioned, but the entire cost of the mill while he was in charge from the time the original contract was signed, to the time the receiver was appointed, that is, 18 months or more.

That MacPhail took possession of the plant as assignee about November 1, 1912. Witness said he did not remember the date the receiver was appointed, but thought it was July 15 or 19, 1914. Witness stated that he was manager for MacPhail all the time MacPhail held the plant as assignee; that exhibit "C" is the statement from the books covering that property, showing all the receipts and disbursements during that period; that during that period MacPhail paid out for interest \$8,271.80, for insurance, \$3,189.46, and for taxes, \$2,165.01; that some of these taxes were due at the time MacPhail took charge.

That MacPhail made a profit of \$1,000 per month during part of the time; that at the first they started the plant and ran a few days in December, 1912, but did not have a satisfactory log supply, and they ran only part of the month of January, 1913, for the same reason. [20] About the first full month's run was had in February. From that time until June 1, the operation of the plant showed a profit that exceeded \$1,000 per month. That they operated the plant through the month of June, and about three weeks

(Testimony of B. H. Lewis.)

in July, he supposed, and a few days in August, 1913; that the reason they continued the operation of the plant when it was not making \$1,000 or more per month was that the market broke and began to decline about the month of June. They then decided it was impossible to operate and make the thousand dollar profit, and during that month stopped taking orders that would prolong the operation. At that time they had orders for some business known as "giant business" signed up. They had orders for one-half million feet or more, which was a special size timber stock that had to be contracted for some little time in advance. The vessels could not take it very fast. They had contracts booked up for two months before they began to cut. It was impossible to place that with other mills for the same price. The price was all right, but other mills on Willapa Harbor had taken all they could handle; that their mill handled its proportion, but they could not stop work on this contract without getting up against a serious proposition of failing in the contract and had to run the plant until the contract was completed, which took thirty days at least of actual operating days. After they had determined it was not profitable to run they had to shut down as soon as they could. In cutting the stuff referred to, they could not apply more than 30 per cent. on that order and were compelled to sell the other 70 per cent. at a loss. There was a profit in filling the order provided there was a demand for other grades of lum-

(Testimony of B. H. Lewis.)

ber; that the grade covered by this contract was obtained in the hearts of logs. The great loss was incurred where they were not able to continue to operate at a profit, occasioned by the decline in price of uppers or clear, which in 90 days' time amounted to from \$8 to \$10 per thousand. That there was no question that they lost money on the [21] logs that they bought to fill that order; that in the operation of a mill plant it is customary to contract for orders as mentioned, that they are all placed that way; that it was impossible to place an order for three or four million feet for less than from 60 to 120 days; that the order referred to was placed with the Robert Dollar Steamship Company of San Francisco; that if the market had remained as it was when they took the order in question they certainly would have made a profit.

On cross-examination by counsel for the objecting creditor, the witness stated that he determined that the mill was operated at a profit by taking an inventory the first of each month; that in May the books of the company showed a profit of \$7,000; that the profit shown did not take into consideration depreciation of the plant and equipment, for the reason that all repairs and replacements were charged direct to operating expenses and not to the plant; that there were small additions here and there not charged to the plant, but charged as operating expenses. In response to a question as to whether on the whole the plant gained or lost, the witness said it all depended upon which date you took that. On

(Testimony of B. H. Lewis.)

the first of June, the plant had gained. Looking at it from a later period there would be a loss, of course; that he could not say how much; that as it turned out under bankrupt conditions the net result of MacPhail's administration was not beneficial to the estate of the bankrupt; that some of the general indebtedness of the company was paid during that period; about 10% of the old indebtedness was paid, together with interest and some certain items that had to be paid in full; that he thought \$18,000 or \$20,000 was shown on the statement as being paid on the old indebtedness contracted before MacPhail took hold; that the \$13,000 shown as a cash expenditure in exhibit "D" attached to the proof of claim was what he referred to; that this was paid on old accounts. [22]

The witness explained the next item, "Assignee \$8,805.37" by stating that that was money advanced by MacPhail; that at the time MacPhail took hold the firm had no credit whatever, that he had to go out practically and with his own name buy anything for other than cash; that he had to give his personal guarantee in order to buy raft logs. That MacPhail received no compensation for his services.

In response to questions on cross-examination by counsel for Hayes & Hayes, creditors of the estate, also appearing in opposition to the allowance of MacPhail's claim, the witness stated that a statement on the condition of the company was made out after MacPhail took possession and was mailed to creditors along toward January 1, 1913; that that state-

(Testimony of B. H. Lewis.)

ment was not correct as other indebtedness had to be added on afterwards; that the statement showed that there was paid on old indebtedness \$13,945.75, which was the correct amount; that the amount of indebtedness of the concern was not increased by the amount of this claim, for which MacPhail was now claiming priority; that the \$13,000 for which MacPhail claims priority was incurred by him in operating expenses, that it was created against the estate; that the sum paid on old accounts was in the nature of a dividend, that all creditors got a part of it, the amount with interest being paid on their claims. That during MacPhail's administration of the plant he bought \$93,000 worth of logs. The amount of the payroll during this period was about \$40,000. That the logs were bought from any one who had logs to sell on the Harbor; that a very small part of them were bought under contract. That so far as he knew MacPhail did not pay more than the market price for logs. That the order to the Robert Dollar Lumber Company which they were obliged to run in order to fill was between half a million and a million, could not say the exact amount, that it was long timber, most of it, that he had never made any estimate of just how much money they lost while operating the plant. [23]

On further examination by counsel for the objecting creditor Titlow, witness stated that the amount of cash advanced in excess of amounts received by MacPhail was about \$13,000, as shown on the statement; that this sum was made up of various advances

(Testimony of B. H. Lewis.)

by MacPhail which amounted in all to \$22,683.08, which were advanced by MacPhail to take up log drafts and the like; that the expenditures in the third column (referring to Exhibit "C" attached to the proof of claim) showed the months in which the payments were made back to MacPhail as assignee; that the difference in the total of \$8,805.37, and the total amount advanced represents the amount which the company still owes MacPhail.

On redirect examination by counsel for claimant, witness stated that the \$13,000 which he said MacPhail had paid off were only individual accounts and did not include taxes and insurance; that this was a dividend paid to all the creditors amounting to 10%; that the statement marked exhibit "C" was correct; that he never heard of MacPhail's being interested in any way in the companies from which he bought the logs; that they purchased logs at market prices; that at the time he took charge of Creech Brothers' mill as manager for MacPhail the books were in such shape it was absolutely impossible to tell what they owed any one, that it really took five or six months to determine; that from January 1st, when the statement of the condition of the plant was put out they had to make corrections; that it turned out afterwards that they did not have all the indebtedness listed in that January, 1913, statement; that the books of the company did not show that, and they knew nothing about it, that this indebtedness appeared afterwards, but the items which appeared in the statement were correct so far as they went.

(Testimony of B. H. Lewis.)

In regard to the overhead expense of the plant while MacPhail was in charge, witness stated that interest on the indebtedness amounted [24] to \$1,000 per month, the taxes were \$125 per month, insurance \$190 per month, and the watchman about \$75 per month; that at the time he closed the plant for MacPhail it was in better condition than when he took charge; that he improved its condition while he operated it.

Testimony of H. W. MacPhail for Claimant.

H. W. MacPHAIL, the claimant, being duly sworn as a witness for himself testified as follows:

That he was the assignee named in the assignment from Creech Brothers dated October 29, 1912, and was the claimant in this proceeding; that the proof of claim in question was his and the exhibits attached thereto were the original papers; that after receiving this assignment he took possession of and operated the plant; that exhibits "B-1," "B-2," "B-3," and "B-4" attached to the proof of claim are the consent of the creditors to his operating the plant and taking charge and preventing their suing. That at the time these consents were obtained the United States National Bank of Centralia was aware of the fact, and that that bank aided or assisted in getting them signed; that the officers of the bank who so assisted were Mr. Dysart and Mr. Gilchrist, the vice-president. That Mr. Gilchrist or Mr. Dysart called upon the Scandinavian American Bank of Astoria, a creditor of the bankrupt, and procured that bank to sign.

(Testimony of H. W. MacPhail.)

That Mr. Gilchrist went with the witness to confer with that bank and persuaded it to give its signature. That witness and Mr. Gilchrist also discussed the matter with Hayes & Hayes, bankers of Aberdeen, creditors of the estate, and Hayes & Hayes signed the consent. [25]

That at the present time the United States National Bank and its receiver was a creditor of Creech Brothers Lumber Company; that the United States National Bank received the paper of Creech Brothers Lumber Company which it now held about the middle of the year 1913 or the early part of 1914. He was not sure as to the date but thought it was in the early part of 1914. He was sure it was after he had taken charge of Creech Brothers' plant as trustee. That at the time the United States National Bank took that paper it knew of these waivers signed by the creditors as before stated. That his claim for \$15,170.69 was made up of two items, principal and interest; that the principal charge without the interest was in the neighborhood of \$13,000. That the way the company became indebted to him was that when he took charge of it, it had no funds on hand, and he agreed to furnish funds for the operation of the plant. These funds were advanced to Mr. Lewis for different things along the line of operation, for the purchase of logs, etc.; that the statement exhibit "C" so far as he knew was true and correct; that the principal sum, \$13,877.74, as shown by exhibit "D-1," was true and correct; that was the principal amount for which the company was indebted to him

(Testimony of H. W. MacPhail.)

and there was interest due on that. That during the time he operated the plant he operated it honestly, efficiently, and the best he could for the interests of the company; that he did not privately or otherwise profit out of the transaction; that he had no interest in any of the companies from whom logs were purchased; that Mr. Lewis' statement as to the reason why the company was not closed down immediately was correct.

On cross-examination by counsel for objecting creditor Titlow, Receiver, counsel, referring to the expression in the proof of claim, "contracted indebtedness and expended money to the extent of \$13,877.74," asked: [26]

"Q. I thought you paid out in excess of amounts received from this company \$13,877.74, that you actually expended money. This seems to indicate there might be simply an assumption of liability. We have no knowledge whether you paid them or not. Perhaps some of them are still claims against the company?"

"A. That is correct."

Witness stated that he was a banker there at Raymond and his bank (the Willapa Harbor State Bank) gave the money and he settled with the bank when he got through, and that was the reason he had this claim against the company. That at the time the assignment was made to him the Creech Brothers Company had various real and personal property, which was all situated in Pacific County, Washington; that they had no property outside of the State

(Testimony of H. W. MacPhail.)

of Washington; that the assignment to him from Creech Brothers Company was not recorded; that he did not sell any part of the fixed property of the company, he simply sold lumber in the ordinary course of business; that he did not sell any of the real property or any part of the plant or machinery.

On redirect examination witness stated that after he discovered the plant was not paying he closed it and notified each of the creditors and stockholders by letter of a meeting; that after sending out those letters he met with the creditors and stockholders and asked them to relieve him of the assignment, but that he did not think they relieved him, that he thought he kept the position until the receiver was appointed in the State court.

Counsel for claimant here offered in evidence the files in the bankruptcy cause of Creech Brothers Lumber Company, Bankrupt. The portions thereof material to this controversy are specifically referred to herein.

On recross-examination witness stated that it was a fact that taking his trusteeship as a whole but not any particular part of the operation the company lost money during that time.

From the files in the bankruptcy cause introduced in evidence, it appeared that a petition in involuntary bankruptcy was filed against Creech Brothers Lumber Company on August 27, 1914, by Siler Mill Company, Raymond Foundry & Machine Company, C. P. Bell and S. F. [27] Bell, copartners as Bell Brothers Hardware Company, the act of bankruptcy

alleged being the appointment of a receiver for the bankrupt by the Superior Court of the State of Washington for Pacific County on July 28, 1914, in a cause therein entitled John L. Myers vs. Creech Brothers Lumber Company; that thereafter adjudication of bankruptcy was made, and on December 28, 1914, Robert G. Chambers was duly appointed trustee in bankruptcy for the Lumber Company and is still the duly appointed, qualified and acting trustee.

It further appeared that the plant and other property and assets of the bankrupt estate had been sold by the trustee in bankruptcy and that the amount realized therefrom is somewhat less than the preferred claim asserted by claimant; that the total indebtedness proved and allowed against the bankrupt is approximately \$137,000.

It was further admitted by counsel on both sides that at the time of and before the assignment to MacPhail and during the period covered by the transactions in question, one C. S. Gilchrist was vice-president of the United States National Bank of Centralia and president of the Willapa Harbor State Bank; that the United States National Bank of Centralia is a national banking association organized under the laws of the United States; that it became insolvent on September 21, 1914, and the objecting creditor A. R. Titlow is its duly appointed, qualified, and acting receiver. That this bank was not a creditor of the Lumber Company at the time of the assignment to MacPhail. The proof of claim filed by the objecting creditor Titlow, receiver, as it ap-

peared from the files in the bankruptcy court introduced in evidence was for money advanced as evidenced by seven promissory notes of the bankrupt for various amounts, aggregating with the interest due thereon to the time of the filing of the petition, the sum of \$16,255.75. Schedule A-3 of the schedules of the bankrupt filed December 9, 1914, being a list of the creditors of the bankrupt and the amounts of their claims, was referred to by counsel and is made a part of this statement of evidence.

(Filed July 6, 1916.) [28]

Order Approving Statement of Evidence.

The appellant and petitioner for revision having duly filed herein and given due notice to the claimant, H. W. MacPhail, of such filing on the 6th day of July, 1916, and having designated the 17th day of July at 10 A. M. at the courtroom of the above-named court at Seattle as the time and place for presenting such statement of evidence for approval, and the appellant and petitioner having appeared at that time and place and asked that such presentation be continued to this date, and the claimant not appearing, and it appearing that no objections or amendments have been proposed by the claimant, and that the proposed statement of evidence is in form and contents satisfactory to both the claimant and the appellant and petitioner for revision and that the same is true, complete and properly prepared, it is

ORDERED that said statement be and it is hereby approved and that the same become a part of the

record both for the purposes of the appeal and of the petition for revision.

Done in open court this 18th day of July, 1916.

JEREMIAH NETERER,

Judge.

(Filed July 18, 1916.) [29]

Notice (of Filing of Proposed Statement of Evidence).

To H. W. MacPhail and Messrs. Welsh & Welsh, and
M. M. Richardson, His Attorneys:

You will please take notice that we have on this 6th day of July, 1916, lodged in the office of the clerk of the above-named court, for your examination, a statement of the evidence herein proposed by the appellant and petitioner A. R. Titlow, Receiver of the United States National Bank, acting in the name and stead of Robert G. Chambers, Trustee in Bankruptcy herein; such evidence to be included in the record both on appeal and upon petition for review in this cause.

And you will please take notice that on the 17th day of July, 1916, at 10 o'clock A. M., at the courthouse of the above-named court in Seattle, Washington, we will ask the Court or Judge to approve the statement hereinbefore mentioned, a copy of which is herewith served upon you.

OLDHAM & GOODALE,

Attorneys for Appellant and Petitioner.

(Filed Jul. 10, 1916.) [30]

**Order Disallowing Priority to Claim of H. W.
MacPhail.**

This cause duly came on for hearing on the 14th day of July, 1915, upon the objections of A. R. Titlow, as receiver of the United States National Bank of Centralia, Washington, one of the creditors of this estate, to the claim of H. W. MacPhail (such objections being filed on behalf and in the name of the trustee of this estate upon leave of court theretofore obtained after the refusal of the trustee in bankruptcy upon demand to make or file such objections) and was argued by counsel, thereupon, upon consideration thereof, it was

ORDERED as follows:

1. That the claim of H. W. MacPhail for priority of payment in the sum of \$15,170.69, or any other sum, be disallowed.

2. That this order is made without prejudice either for or against H. W. MacPhail's right to file and prove a general claim against this estate or the trustee's right to recover any preferential payments from the bankrupt to H. W. MacPhail.

Done in open court this 6th day of October, 1915.

R. F. LAFFOON,

Referee in Bankruptcy.

(Filed Oct. 6, 1915.) [31]

Objections to the Proof of Claim of H. W. MacPhail.

A. R. Titlow, as receiver of the United States National Bank of Centralia, Washington one of the

creditors of this estate with leave first obtained from this court to file objections to the claim of H. W. MacPhail herein, in the name and for the trustee of this estate and for the benefit of this estate and its creditors, objections to the claim of said H. W. MacPhail heretofore filed in the sum of \$15,170.69 and as grounds for said objections states:

I.

Said claim upon its face and in connection with the exhibits attached thereto does not entitle said claimant to priority, preference or security over the claim of general creditors in this estate.

II.

Said claim upon its face and exhibits attached thereto show that it is not entitled to any priority in payment over the claim heretofore filed on behalf of the United States National Bank of Centralia.

III.

Not only should said claim be not allowed as a secured or prior claim, but said claim upon its face shows that it is not entitled to any standing in this estate as a general claim or as any claim at all.

IV.

If allowed at all as a general claim said claim together with the exhibits attached thereto show that the same should not be allowed in any greater sum than \$6,000.

BAUSMAN OLDHAM & GOODALE,
Attorneys for A. R. Titlow as Receiver of U. S.
National Bank of Centralia, a Creditor herein,
and Filing These Objections on Behalf of and
in the name of the Trustee of This Estate. [32]

Objections to the Claim of MacPhail.

A. R. Titlow, as receiver of the United States National Bank of Centralia, with the leave of court first obtained, for and on behalf of Robert Chambers, as trustee hereing, and in the name of trustee does hereby file objections to the claim of H. W. MacPhail and for grounds of said objections and exceptions to the aforesaid H. W. MacPhail says:

I.

As claim of H. W. MacPhail is not entitled to preference or priority in payment under Acts of Congress relative to bankruptcy estates said claim, if allowed at all, is a general claim against this estate.

A. R. TITLOW,

On Behalf of Robert Chambers as Trustee of the Estate of Creech Bros. Lumber Company, Bankrupt.

(Verified.)

(Filed May 22, 1915.) [33]

SCHEDULE A-3.

CREDITORS WHOSE CLAIMS ARE
UNSECURED.

Willapa Harbor State Bank, Note Dated	
8/17/13	\$2000.00
Willapa Harbor State Bank, Note Dated	
8/17/13	2000.00
Willapa Harbor State Bank, Note Dated	
8/19/13	2500.00
Willapa Harbor State Bank, Note Dated	
8/29/13	8540.00

Willapa Harbor State Bank, Note Dated	
8/31/13	7000.00
Willapa Harbor State Bank, Note Dated	
8/31/13	6546.00
Willapa Harbor State Bank, Note Dated	
9/14/13	1500.00
Willapa Harbor State Bank, Note Dated	
9/16/13	2000.00
Willapa Harbor State Bank, Note Dated	
9/16/13	2000.00
Willapa Harbor State Bank, Note Dated	
9/16/13	2000.00
Willapa Harbor State Bank, Note Dated	
9/16/13	2000.00
Willapa Harbor State Bank, Note Dated	
9/22/13	3500.00
Willapa Harbor State Bank, Note Dated	
11/16/13	2500.00
Willapa Harbor State Bank, Note Dated	
5/4/14	2000.00
Willapa Harbor State Bank, Note Dated	
5/4/14	2000.00
Willapa Harbor State Bank, Note Dated	
5/4/14	2000.00
Willapa Harbor State Bank, Note Dated	
6/14/14	3000.00
Willapa Harbor State Bank, Note Dated	
6/14/14	3000.00
M. C. Welsh, Trustee, Note Dated 9/17/13..	7000.00
M. C. Welsh, Trustee, Note Dated 9/17/13..	2000.00

54 *In the Matter of Creech Bros. Lumber Co.*

H. W. MacPhail, Trustee, Note Dated	
9/8/13	9553.26
H. W. MacPhail, Trustee, Note Dated	
9/28/13	4357.42
John S. Creech, Note Dated 10/12/12.....	385.29
Floyd E. Creech, Note Dated 2/25/13.....	1268.72
Hayes & Hayes Bank, Note Dated 6/1/13..	9000.00
Hayes & Hayes Bank, Note Dated 6/1/13..	9000.00

CERTIFICATES OF INDEBTEDNESS.

Johnson Bros. 1st Natl. Bank, Astoria....	900.00
Johnson Bros. Scandinavian-Am. Bank,	
Astoria	2500.00
Johnson Bros. Scandinavian-Am. Bank,	
Astoria	335.00
Johnson Bros. Scandinavian-Am. Bank,	
Astoria	2500.00
Chas. Neimi, Scandinavian-Am. Bank,	
Astoria	900.00
Johnson Bros. Scandinavian-Am. Bank,	
Astoria	2000.00
Chas. Wirkkala, Scandinavian-Am. Bank,	
Astoria	1450.00
Nasel Boom Company, Tacoma.....	1212.90
Chehalis Lumber Company, U. S. Natl.	
Bank, Centralia	3338.27
H. Syverson, U. S. Natl. Bank, Centralia..	967.59
Niagara Boom Company, Astoria.....	184.91
“ “ “ “	103.95
“ “ “ “	150.48
“ “ “ “	245.58
“ “ “ “	137.30

Kalb & Larkin Logging Company, Astoria.	3661.34
“ “ “ “ “	680.51
Raymond General Hospital, Raymond.....	234.00
Washington Iron Works, Seattle.....	901.09
W. P. Fuller & Company, Portland.....	774.28
[34]	
W. S. Applegate, Raymond.....	138.51
West Coast Wire Rope Company, Tacoma..	646.82
Railway Supply Company, Seattle.....	276.66
Broderick & Bascom Rope Company, St. Louis	672.38
S. B. Hicks & Sons Company, Seattle.....	123.70
Nettleton & Company, South Bend.....	98.00
G. E. Garrett, Raymond.....	194.78
Henry Disston & Sons, Seattle.....	312.55
P. W. Rhodes, South Bend.....	226.00
W. R. Johnson, Raymond.....	223.95
Seattle Hardware Company, Seattle.....	435.81
Hart-Wood Lumber Company, San Fran- cisco, Cal.	2275.00
Messe & Gottfried Company, Seattle.....	159.71
John Finn Metal Works, Seattle.....	115.01
Simonds Manufacturing Company, Port- land	482.45
Caldwell Machinery Company, Tacoma....	108.00
Philbrick Cutter Head Company, Seattle..	97.38
Calhoun, Denny & Ewing, Seattle.....	427.57
Pacific Transportation Company, South Bend	918.12
Bell Bros. Hardware Company, Raymond..	72.35
Chas. Herman, South Bend.....	150.01
Standard Towboat Company, Raymond....	30.25

Raymond Foundry & Machine Company,	
Raymond	235.65
John L. Myers, South Bend.....	181.21
James Churchill Glove Company, Centralia	126.45
Lewis & Reed, Raymond.....	342.00
Davis-Scott Belting Company, Portland...	219.46
Carstens Packing Company, Tacoma.....	720.42
“ “ “ “ 	100.69
Standard Oil Company, Tacoma.....	206.17
Chehalis Produce Company, Aberdeen.....	443.52
Dwight Edwards Company, Portland.....	67.05
Siler Mill Company, Raymond.....	233.19
Welsh & Welsh, Raymond.....	191.87
Portland Machinery Company, Portland..	68.64
Allis-Chalmers Manufacturing Company,	
Seattle	53.55
Great Western Smelting Company, Seattle.	54.81
Mill & Mine Supply Company, Seattle.....	28.58
E. C. Atkins & Company, Portland.....	31.50
South Bend Mills & Timber Company, South	
Bend	26.04
Case Shingle & Lumber Company, Raymond	46.62
Martin C. Welsh, Raymond.....	721.15
Willapa Harbor Iron Works, South Bend..	416.18
Mrs. Bertha C. Stringer, Men/c.....	509.57
Benson Office Supply Company, Aberdeen.	32.00
Raymond Livery & Garage, Raymond.....	22.73
Transit Towboat Company, South Bend....	19.60
B. F. Armstrong, Westport.....	29.63

H. H. Powelson, Raymond.....	40.45
Northern Pacific Railway Company, Tacoma	360.00

Total \$137,531.48

CREECH BROS. LUMBER COMPANY,

By JOHN S. CREECH,

President.

(Filed Dec. 9, 1914—10:08 A. M.) [35]

Findings of Fact and Conclusions of Law.

This matter came on before the Court on the 25th day of March, 1916, on petition of H. W. MacPhail, for review of the order of the Referee in Bankruptcy disallowing the claim of the petitioner as preferred. This matter was presented orally and briefs were thereafter filed and the Court on the 28th day of April, 1916, filed its memorandum decision overruling the Referee and allowing the claim as preferred, and the Court now, all parties appearing, and A. R. Titlow, the Receiver of the United States National Bank of Centralia, a creditor, appearing as such in the name of the Trustee, on motion for final order, makes the following findings of fact and conclusions of law:

I.

That on and prior to the 21st day of October, 1912, the bankrupt was a corporation of the State of Washington, engaged in manufacturing lumber, and at such time its liabilities greatly exceeded its assets, and on said date entered into an agreement with H.

W. MacPhail, wherein it appointed MacPhail irrevocably its attorney in fact, to do various things with relation to such business, and which it is claimed by attorneys for MacPhail to be an assignment for the benefit of creditors. The agreement is marked exhibit "A" and is attached to the proof of claim of MacPhail and is made a part of this finding. There is also attached to petitioner's proof of claim exhibits "B-1," "B-2," "B-3" and "B-4," being executed by then existing creditors of the bankrupt.

II.

Upon the execution of such instrument by the bankrupt and existing creditors of the bankrupt, MacPhail took possession of the assets of the bankrupt and began the operation of its mill plant, and continued such operation until July or August, 1913, and retained possession of all of the assets until delivered to the Receiver appointed [36] by the State Court, which appointment was made about the 30th day of July, 1914.

III.

That on August 27, 1914, a petition in involuntary bankruptcy was filed against the above bankrupt and thereafter adjudication was made, and on December 28, 1914, Robert G. Chambers was duly appointed Trustee in Bankruptcy for such corporation and qualified and is still acting.

IV.

That upon commencing the operation of the mill plant, MacPhail entered into a contract in which he agreed to furnish certain select timber known as "giant timber," to produce which only about thirty

per cent of the total cut of the log could be used, and the remaining seventy per cent, was manufactured into lumber for the market, and a profit in excess of \$1,000 a month was realized in the operation of the mill for some five or six months; but the general lumber market "broke" after six months' operation. A number of orders had been taken for the "giant timber" prior to this time, and it was necessary to continue the operation of the mill until these orders were filled, and it was found that the plant could not be operated at a profit.

V.

Upon realizing that the plant could not be operated at a profit, MacPhail notified all of the creditors and stockholders of the bankrupt by letter and requested to be relieved of the operation of the so-called assignment or agreement, but he was not relieved.

VI.

That during the operation of the mill MacPhail paid something over ten per cent of the claims of the creditors; paid over \$3,000 in insurance; over \$2,000 in taxes; and upon the mill [37] being closed down, after having paid for all of the logs amounting to over \$93,000 and for labor amounting to over \$46,000, together with other items necessarily disbursed, he found that he had expended \$13,877.74 more than he had received.

VII.

That the United States National Bank of Centralia at all times was a corporation organized under the national banking laws, with its principal place of

business at Centralia, Washington; that it became insolvent on the 21st day of September, 1914, and thereafter A. R. Titlow was appointed and is now the duly qualified Receiver of said bank.

VIII.

That at the time of the execution of the agreement referred to as exhibit "A" in finding No. 11 the United States National Bank was not a creditor of the bankrupt company, but subsequently became such, and the Receiver has proved its claim in the sum of \$16,255.75.

IX.

That at the time of the making of the agreement exhibit "A," one Charles H. Gilchrist, the Vice-President and Manager of the bank, and George Dysart, one of the other officers of the bank, were instrumental in procuring the signature of the bankrupt corporation and of the creditors to the agreement, exhibit "A," and at the time the United States National Bank procured the notice on which its claim is founded and which makes it a creditor, it knew that McPhail was in possession of the mill and all of the property of bankrupt, and of the waivers signed by the creditors, and had full notice and knowledge of all of the facts relating thereto. [38]

X.

That the agreement exhibit "A" was never filed for record in the auditor's office of Pacific County where the property covered by it is situated.

XI.

That neither the trustee nor any creditor other than the Receiver aforesaid has protested the claim

of MacPhail as a preferred claim.

The foregoing findings are based upon the following, which, (aside from an admission by counsel for both sides as to Gilchrist's relations with the Willapa Harbor State Bank), constitute all of the evidence before the Court on this hearing for review:

1. Referee's certificate of review.
2. Transcript of testimony on hearing before Referee.
3. Petition for review of Referee's order.
4. Order disallowing priority to claim of H. W. MacPhail.
5. Proof of claim of H. W. MacPhail, assignee, and exhibits "A," "B-1," "B-2," "B-3," "B-4," "C" and "D" thereto attached.
6. Proof of claims of creditors filed in the Bankruptcy Court.

and as conclusions of law the Court finds:

I.

That MacPhail's claim for the money advanced by him is preferred.

II.

That the United States National Bank and its Receiver are estopped to object to the allowance of such claim as a prior claim.

III.

That MacPhail is entitled to the allowance of his claim as preferred in the sum of \$13,877.74.

Done in open court this 12 day of June, 1916.

JEREMIAH NETERER,

Judge. [39]

**Exceptions of Receiver to Findings of Fact and
Conclusions of Law.**

To the foregoing findings A. R. Titlow, Receiver of the United States National Bank of Centralia, a creditor of this estate, appearing herein and objecting to the allowance of the preferred claim of H. W. MacPhail in the name and stead of the trustee in bankruptcy, duly excepted as follows in the name and stead of the trustee:

I.

To the following part of paragraph 9 of the findings:

“At the time the United States National Bank procured the note on which its claim is founded and which makes it a creditor, it knew that MacPhail was in possession of the mill and all of the property of bankrupt and that the waiver was signed by the creditors and had full notice and knowledge of all the facts relating thereto,” and each and every part thereof, on the ground that the same is contrary to the law and the evidence.

II.

To the remainder of said finding No. 9 if said remainder of said finding be construed to mean that the facts therein stated are sufficient to constitute notice to the United States National Bank of the said agreement exhibit “A” or the Bank’s assent thereto, on the ground that the part of the finding referred to, if so construed, is contrary to the law and the evidence. [40]

III.

To the following part of finding No. 11:

“That neither the trustee nor any creditor other than the receiver trustee has protested the claim of MacPhail as a preferred claim”

and each and every part thereof, on the ground that the same is contrary to the law and the evidence.

IV.

To findings Nos. 5 and 6 and each and every part of each of those findings on the ground that the same are contrary to law and the evidence.

V.

Said creditor is the name of the trustee in bankruptcy further excepted to the conclusions of law as follows: to each and every one of the conclusions of law 1 to 3 inclusive and each and every part thereof, on the ground that the same are contrary to law and the evidence and the facts found. And for the further reasons that exhibits “A,” “B-1,” “B-2,” “B-3” and “B-4” attached to MacPhail’s proof of claim, and under which he claims priority, do not give any general lien against the assets of the bankrupt, but only as against the bankrupt a right to reimburse himself out of profits, if he made any, and out of the sale of the assets by him, and as against the creditors who signed the said exhibits “B,” Macphail under said instruments had the right only to reimburse himself out of the profits from the operation of the plant, if he made any, and such creditors agreed only to extend the time of payment of their claims and to desist from pressing them as long as

MacPhail could make a profit of \$1,000 or more per month, and not all the creditors assented even to that extent; and for the further reason that the rights asserted in this proceeding by the [41] objecting creditor are those of the trustee in bankruptcy, and therefore no estoppel against any particular creditor is material, if any existed, and further that the evidence and the facts found are, as a matter of law, insufficient to prove that the United States National Bank or its receiver knew of or assented to the arrangement for giving MacPhail's priority even if the arrangement had that effect; for the further reason that the instrument purporting to give MacPhail priority being an instrument creating a lien, is invalid as against the trustee in bankruptcy, and the creditors of this estate, because it was not filed, recorded, executed or acknowledged, as required by the statutes of the State of Washington; for the further reason that under the evidence and the facts found by the Court MacPhail is not as a matter of law entitled to the allowance of any preferred claim whatever.

The foregoing exceptions presenting questions of law urged before this Court upon MacPhail's petition for review of the Referee's order disallowing his preferred claim, were duly called to the attention of the Court at and before the time of the signing of the foregoing findings, and are hereby allowed, this 12th day of June, 1916.

JEREMIAH NETERER,
Judge.

(Filed June 12, 1915.) [42]

Order Allowing Claim of H. W. MacPhail.

This cause duly came on for hearing on the 25th day of March, 1916, upon the petition of H. W. MacPhail to review an order of the referee in bankruptcy entered herein on the 6th day of October, 1915, disallowing the preferred claim sought to be established by the said H. W. MacPhail. The cause was argued by counsel, and now, upon consideration thereof, it is

ORDERED that the claim of said H. W. MacPhail be and it is hereby allowed as preferred in the sum of thirteen thousand eight hundred seventy-seven & 74/100ths dollars (\$13,877.74).

To all of which A. R. Titlow, receiver of the United States National Bank, a creditor of this estate appearing herein and objecting to the allowance of such claim in the name and stead of the trustee in bankruptcy, with leave of Court first obtained upon the refusal of the trustee in bankruptcy so to do, duly excepted in the name and stead of the trustee, and such exceptions are allowed.

Done in open court this 12 day of June, 1916.

JEREMIAH NETERER,

Judge. [43]

And the said A. R. Titlow, in the capacity hereinbefore mentioned, further specifically excepted to the foregoing order upon the following grounds, to wit:

1. Upon the ground that under the instruments upon which MacPhail relies for priority, to wit, exhibits "A," "B-1," "B-2," "B-3," and "B-4," at-

tached to McPhail's proof of claim, he could claim priority of payment even as against the bankrupt only from profits or from moneys realized from the sale of the assets by him, and that the only assent given by the creditors was that some of them assented to MacPhail's reimbursing himself out of the profits of the operation of the plant, if he made any, and such creditors agreed only to extend the time of payment of their claims and desist from pressing them as long as MacPhail could make a profit of \$1,000 or more per month, and that not all of the creditors assented even to that extent.

2. That the evidence and the facts found are insufficient as matter of law to charge the United States National Bank with notice or to imply assent on its part to the arrangement for giving MacPhail priority, and for the further reason that the objecting creditor is here asserting the rights of the trustee in bankruptcy, and therefore no estoppel against any particular creditor, even if such existed, is material.

3. For the further reason that the conveyance or assignment to MacPhail, being an instrument creating a lien and not being filed, recorded, executed or acknowledged as required by the statutes of the State of Washington, is invalid as against the trustee in bankruptcy and the creditors of this estate.

4. For the further reason that under the evidence and the facts found by the Court, MacPhail is as a matter of law not entitled to a preferred claim in the sum of \$13,877.74 or any other sum.

The foregoing exceptions presenting questions of law which were urged before this Court upon the

hearing of MacPhail's petition to review [44] the order of the Referee in Bankruptcy disallowing his preferred claim are hereby allowed this 12th day of June, 1916.

JEREMIAH NETERER,
Judge.

(Filed June 12, 1916.) [45]

**Demand and Notice of Receiver of U. S. National
Bank of Centralia to Trustee in Bankruptcy.**

To Robert G. Chambers, Trustee in Bankruptcy
Herein:

Demand is hereby made upon you by A. R. Titlow, receiver of the United States National Bank of Centralia, Washington, a creditor of this estate in the sum of \$16,255.75, whose claim has been proved and allowed herein, to take such steps as may be necessary and proper to obtain a review by the Circuit Court of Appeals for the Ninth Circuit, of the order of the above-named court, entered herein on the 12th day of June, 1916, allowing a preferred claim to H. W. MacPhail.

And you are hereby notified that in the event of your refusal or failure to institute such proceedings before the 21st day of June, 1916, we shall, on that date, at 10 o'clock A. M., apply to the above-named court, at Seattle, Washington, the Honorable Jeremiah Neterer presiding, for an order permitting the undersigned to take such proceedings in your name and stead.

Dated at Seattle, Washington, this 13th day of June, 1916.

A. R. TITLOW,
Receiver of the United States National Bank of Centralia,

By OLDHAM & GOODALE,
His Attorneys.

(Affidavit of service attached.)

(Filed June 22, 1916.) [46]

**Order Shortening Period of Notice of Receiver to
Trustee in Bankruptcy.**

On application of A. R. Titlow, Receiver of the United States National Bank of Centralia, a creditor of this estate, and good cause being shown, it is

ORDERED, that five days' notice, by mail, to Robert W. Chambers, Trustee in Bankruptcy shall be sufficient notice of said creditor's intention to apply to this Court to take whatever proceedings are necessary to obtain a review by the Circuit Court of Appeals for the Ninth Circuit, of the order of this court allowing a preferred claim to H. W. MacPhail; such notice being deemed reasonable and adequate in the premises.

Done in open court this 12 day of June, 1916.

JEREMIAH NETERER,
Judge.

(Filed June 13, 1916.) [47]

Order Permitting Creditor to Take Appellate Proceedings in Name of Trustee.

It appearing that A. R. Titlow, Receiver of the United States National Bank of Centralia, Washington, a creditor of this estate, has made due written demand upon the Trustee in Bankruptcy to take such steps as may be necessary and proper to obtain a review by the Circuit Court of Appeals for the Ninth Circuit of the order of this Court entered herein on the 12th day of June, 1916, allowing a preferred claim to H. W. MacPhail; and it appearing that the Trustee has failed to institute such proceedings, and that said creditor has given due notice of his intention to apply at this time and place for an order permitting him to take such proceedings in the name and stead of the Trustee, the said creditor having prosecuted the petition for review before this Court; now, the Court being fully advised in the premises, it is

ORDERED that A. R. Titlow, Receiver of the United States National Bank of Centralia, Washington, a creditor of this estate and a party in interest herein be and he is hereby given leave to take such proceedings whether by appeal or by petition for review, or both, as he may be advised and as may be necessary and proper to obtain a review by the Circuit Court of Appeals for the Ninth Circuit of the order of this Court allowing such preferred claim.

Done in open court this 21st day of June, 1916.

JEREMIAH NETERER,

Judge.

(Filed June 22, 1916.) [48]

Petition for Appeal.

Comes now A. R. Titlow, as receiver of the United States National Bank of Centralia, Washington, a creditor of this estate, having been by order of this Court duly entered herein permitted to appeal in the name and stead of the trustee in bankruptcy, and feeling himself aggrieved by the order entered in the above-entitled court and cause on the 12th day of June, 1916, allowing a preferred claim against this estate to H. W. MacPhail, does hereby appeal in the name and stead of Robert G. Chambers, trustee in bankruptcy herein, from said order to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herein, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California.

R. P. OLDHAM,

R. C. GOODALE,

Solicitors for Appellant.

(Filed June 22, 1916.) [49]

Assignment of Errors.

Now, on this 21st day of June, 1916, comes A. R. Titlow, as receiver of the United States National Bank of Centralia, Washington, a creditor of the above-named estate and files the following assignment of errors in the name and stead of Robert G. Chambers, trustee in bankruptcy herein, and says that the order entered in the above-entitled cause on the 12th day of June, 1916, allowing a preferred claim to H. W. MacPhail is erroneous and unjust to him and to said trustee in bankruptcy and to all the creditors of this estate:

1. Because the District Court erred in finding and adjudging that the said H. W. MacPhail was entitled to a preferred claim against this estate in any sum whatever, for the reasons stated in this appellant's exceptions to order allowing claim, filed herein June 12, 1916.

2. Because the District Court erred in finding that said H. W. MacPhail was entitled to any claim whatsoever against this estate since the proof shows that MacPhail has received unlawful preferences which he has not surrendered.

WHEREFORE the aforesaid creditor in the name and stead of the trustee in bankruptcy prays that said order be reversed and the District Court be directed to disallow the claim as preferred or otherwise, and for such other relief as the trustee in bankruptcy or the aforesaid creditor acting herein in his

name and stead may be entitled to in equity.

R. P. OLDHAM,

R. C. GOODALE,

Solicitors for Appellant.

(Filed June 22, 1916.) [50]

Order Allowing Appeal.

A. R. Titlow, as Receiver of the United States National Bank of Centralia, Washington, a creditor of the above-named estate, having been duly permitted by order entered herein to appeal in the name and stead of the trustee in bankruptcy from the order of this court entered herein on the 12th day of June, 1916, allowing a preferred claim against this estate to H. W. MacPhail, and having heretofore filed his assignment of errors and petition for appeal from said order; and it appearing that he has been directed by the Comptroller of the Currency of the United States of America to take such appeal; Now, Therefore, it is hereby

ORDERED that the petition for appeal be granted and the appeal is hereby allowed, and that such appeal shall be taken in the name and stead of Robert G. Chambers, trustee in bankruptcy of this estate. It is further

ORDERED that the appellant shall not be required to furnish any security upon said appeal.

Dated this 22 day of June, 1916.

JEREMIAH NETERER,

Judge.

(Filed June 22, 1916.) [51]

Certificate Directing Appeal or Petition for Review.

To A. R. Titlow, Receiver of the United States
National Bank of Centralia, Washington:

You are hereby directed to take whatever proceedings may be necessary, whether by petition for review or by appeal, or both, as you may be advised, either in your own name or in the name and stead of the Trustee in Bankruptcy of the above-named estate, to procure a review by the Circuit Court of Appeals for the Ninth Circuit, of the order of the District Court for the Western District of Washington, Southern Division, entered in the above-entitled cause on the 12th day of June, 1916, allowing a preferred claim to H. W. MacPhail against the above-named estate.

WITNESS the Honorable T. P. KANE, Acting
Comptroller of the Currency, this 19th day of June,
1916.

[Seal of Comptroller of the Currency.]

T. P. KANE,
Comptroller of the Currency.

(Filed July 6, 1916.) [52]

Petition for Review of Referee's Order.

R. F. LAFFOON, Esq., Referee in Bankruptcy.

Comes now H. W. MacPhail and petitions the Honorable R. F. Laffoon for an order certifying to the Honorable Edward E. Cushman, Judge of the above-named court for review all of the matters pertaining in and to the order entered herein on the 6th day of October, 1915, a copy of which is hereto

annexed, relating to and finding against the claim of the said H. W. MacPhail and denying his claim both as a preferred claim and a common claim against said estate and the trustee in bankruptcy thereof.

Your petitioner feels aggrieved because of such order and says that the said order and decree is erroneous and against the just rights of your petitioner and contrary to the laws and facts, for the following reasons:

I.

That from the evidence introduced at said hearing, your petitioner is entitled to a preferred claim against said insolvent estate and the trustee in bankruptcy therefor, and is and was entitled to priority in payment of his claim and the referee erred in not entering an order herein adjudging petition to be entitled to priority of payment, and ordering and directing the trustee of the above-named bankrupt, to pay said claim as a prior and preferred claim.

II.

That the evidence shows that the claim of your petitioner was a provable debt against the estate of said bankrupt and the referee erred in not allowing said claim against said estate.

III.

That the evidence shows that the judgment, decree and [53] order should have been in favor of this petitioner and against the trustee of the above-named bankrupt, in that said indebtedness was contracted by your petitioner on and between the 29th day of October, 1912, and the 30th day of July, 1913,

while he was acting as assignee for the benefit of creditors of said Creech Bros. Lumber Company, now bankrupt, under a general assignment for the benefit of creditors which is attached to his proof of claim herein, and while acting as such assignee he expended money to the amount of \$13,877.74 in excess of the amount which he received.

And at the time of filing of said petition in bankruptcy, there was due your petitioner as interest on the said amount so advanced by him as assignee, the sum of \$1,292.89 no part of which has been paid, and under the evidence introduced at this hearing and under and pursuant to the laws of the State of Washington and the acts of Congress relating to bankruptcy, your petitioner was and is entitled to priority of payment and said referee erred in not finding and entering an order adjudging and decreeing your petitioner entitled to priority of payment.

Your petitioner further represents that his claim was filed with the trustee of the above-named bankrupt and the referee within the time provided by law, which claim was in the form and sworn to as required by law, and was filed with the trustee on or about the 24th day of April, 1915, and is now on file in the office of the referee.

WHEREFORE, the said H. W. MacPhail prays that the said order entered herein by the referee on the 6th day of October, 1915, be reviewed by the Honorable Edward H. Cushman, Judge of the above-named court and that said order be adjudged erroneous and void and that his claim be allowed as a

preferred claim, and that he be adjudged entitled to priority of payment from the funds and estate of said bankrupt, and that he have such other and further relief as [54] may be meet and equitable.

Dated at Raymond, Washington, this 19th day of October, 1915.

H. W. MACPHAIL,
Petitioner.

WELSH & WELSH,
Attorneys for Petitioner.

(Verification.)

* * * * * * * *

**Order Disallowing Priority to Claim of H. W.
MacPhail.**

This cause duly came on for hearing on the 14th day of July, 1915, upon the objections of A. R. Titlow, as receiver of the United States National Bank of Centralia, Washington, one of the creditors of this estate, to the claim of H. W. MacPhail (such objections being filed on behalf and in the name of the trustee of this estate upon leave of Court therefore obtained after the refusal of the trustee in bankruptcy upon demand to make or file such objections) and was argued by counsel, thereupon, upon consideration thereof, it was

ORDERED as follows:

1. That the claim of H. W. MacPhail for priority of payment in the sum of \$15,170.69, or any other sum, be disallowed.

2. That this order is made without prejudice either for or against H. W. MacPhail's right to file and prove a general claim against this estate, or the

trustee's right to recover any preferential payments from the bankrupt to H. W. MacPhail.

Done in open court this 6th day of October, 1915.

R. F. LAFFOON,
Referee in Bankruptcy. [55]

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return the foregoing and attached to be a full, true, and complete transcript of the record on appeal in the case of Creech Brothers Lumber Company, a Corporation, Bankrupt, A. R. Titlow, Receiver of the U. S. National Bank of Centralia, Washington, in the name and stead of Robert G. Chambers, Trustee, vs. H. W. MacPhail, lately pending in this court, as the same remains on file and of record in this office in said District, at Tacoma, and that the same is made pursuant to praecipe of counsel filed herein.

I further certify and return that I hereto attached and herewith transmit the original Citation and original Order extending time for transcript herein.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office, by and on behalf of the petitioner A. R. Titlow, for making the record, certificate and return to the United States

78 *In the Matter of Creech Bros. Lumber Co.*

Circuit Court of Appeals for the Ninth Circuit:

Clerk's fees (Sec. 828 R. S. U. S.) for
making record, certificate and
return 109 folios at 15¢..... 16.35

Certificate of clerk to transcript, 2
fo. @ 15¢..... .30

Seal to said certificate..... .20

ATTEST MY HAND AND OFFICIAL SIGNA-
TURE and the seal of said Court, at Tacoma, in said
District, this 21st day of July, A. D. 1916.

[Seal]

FRANK L. CROSBY,
Clerk.

By E. C. Ellington,
Deputy Clerk. [56]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. 1627.

In the Matter of CREECH BROTHERS LUMBER
COMPANY, a Corporation, Bankrupt.

Citation on Appeal.

The United States of America,—ss.

To H. W. MacPhail, Greeting:

You are hereby notified that in a certain proceed-
ing in bankruptcy in the United States District
Court for the Western District of Washington,
Southern Division, entitled *In the Matter of Creech
Brothers Lumber Company, a Corporation, Bank-
rupt*, being bankruptcy cause No. 1627, an appeal in
the name and stead of Robert G. Chambers, Trus-
tee in Bankruptcy, has been allowed A. R. Titlow

as receiver of the United States National Bank of Centralia, Washington, a creditor of this estate, to whom permission to take such appeal in the manner and form aforesaid has been granted by order duly entered therein, from the order of the said District Court entered in said cause on the 12th day of June, 1916, allowing a preferred claim to you; and you are therefore hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, in the State of California, within thirty days from the date of this citation, to show cause if any there be why the said order appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Honorable JEREMIAH NETERER, Judge of said United States District Court, this 22d day of June, 1916.

[Seal] JEREMIAH NETERER.

Due service of the foregoing citation is hereby admitted by H. W. MacPhail, claimant, by his solicitors of record this 30th day of June, 1916.

WELSH & WELSH and
M. M. RICHARDSON,

Solicitors for Claimant H. W. MacPhail. [57]

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Creech Brothers Lumber Company, a Corporation, Bankrupt. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jun. 22, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

Filed in the U. S. District Court, Western Dist.
of Washington, Southern Division. Jul. 6, 1916.
Frank L. Crosby, Clerk. By F. M. Harshberger,
Deputy.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. —

In the Matter of CREECH BROTHERS LUMBER
COMPANY, a Corporation, Bankrupt.

**Notice of Application for Extension of Time to File
Record, etc.**

To H. W. MacPhail, Claimant, and Messrs. Welsh
& Welsh and M. M. Richardson, His Attorneys:

Please take notice that on the 17th day of July,
1916, at 10 o'clock A. M., or as soon thereafter as
counsel can be heard, we shall present to the Honor-
able JEREMIAH NETERER, Judge of the United
States District Court for the Western District of
Washington, at the court room of said District Court
at Seattle, Washington, an order, a copy whereof is
herewith served upon you.

OLDHAM & GOODALE,
Attorneys for Appellant and Petitioner.

Service of the foregoing notice and of the order
therein referred to is hereby admitted this 13th day
of July, 1916.

WELSH & WELSH,
Attorneys for H. W. MacPhail. [58]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. —

In the Matter of CREECH BROTHERS LUMBER
COMPANY, a Corporation, Bankrupt.

**Order Extending Time to File Record upon Petition
for Review and Appeal.**

Upon motion of the appellant and petitioner, A. R. Titlow, Receiver of the United States National Bank of Centralia, appealing and petitioning for review in the name and stead of Robert G. Chambers, Trustee in Bankruptcy, and good cause being shown, it is

ORDERED That the appellant's and petitioner's time for filing the record of this cause both upon the appeal and the petition for review, and for docketing the case with the Clerk of the Circuit Court of Appeals at San Francisco, be and it is hereby extended to and including the 1st day of August, 1916.

Done in open court this 18 day of July, 1916.

JEREMIAH NETERER,

Judge. [59]

[Endorsed]: Original. No. —. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Creech Brothers Lumber Company, a Corporation, Bankrupt. Order Extending Time to File Record Upon Petition for Review and Appeal and Notice Thereof. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jul. 19, 1916. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy.

[Endorsed]: No. 2827. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Creech Brothers Lumber Company, a Corporation, Bankrupt. A. R. Titlow, as Receiver of the United States National Bank of Centralia, Appearing in the Name and Stead of Robert G. Chambers, as Trustee in Bankruptcy of the Estate of Creech Brothers Lumber Company, a Corporation, Bankrupt, Appellant, vs. H. W. MacPhail, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Southern Division.

Filed July 24, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.